

In the House of Representatives, U. S.,

October 5, 1994.

Resolved, That the bill from the Senate (S. 423) entitled “An Act to provide for recovery of costs of supervision and regulation of investment advisers and their activities, and for other purposes”, do pass with the following

AMENDMENT:

Strike out all after the enacting clause and insert:

1 ***SECTION 1. SHORT TITLE.***

2 *This Act may be cited as the “Investment Advisers*
3 *Amendments of 1994”.*

4 ***SEC. 2. ADDITIONAL RESOURCES FOR INVESTMENT AD-***
5 ***VISER SUPERVISION.***

6 *(a) FEES FOR REGISTRANTS AND APPLICANTS.—The*
7 *Investment Advisers Act of 1940 (15 U.S.C. 80b–1 et seq.)*
8 *is amended by inserting after section 203 the following new*
9 *section:*

10 *“FEES FOR REGISTRANTS AND APPLICANTS*

11 *“SEC. 203A. (a) IN GENERAL.—The Commission is*
12 *authorized, in accordance with this section, to collect fees*
13 *to recover the costs of registration, supervision, and regula-*
14 *tion of investment advisers and their activities. Any such*
15 *fees shall be collected, and shall be available, only to the*
16 *extent provided in advance in appropriations Acts. No ap-*

1 *propriations Act may authorize fees to be collected under*
2 *this section during any fiscal year after fiscal year 1995,*
3 *unless the amount appropriated by such Act for such costs*
4 *for such fiscal year equals or exceeds the aggregate amount*
5 *that may reasonably be expected to be collected by such fees.*
6 *Any such fees shall be deposited as an offsetting collection*
7 *to the Commission's appropriation and may remain avail-*
8 *able for such purposes for the succeeding fiscal year. The*
9 *costs covered by such fees shall be limited to the costs of*
10 *Commission expenses for registration, examinations, and*
11 *surveys of persons registered or required to register under*
12 *this title.*

13 “(b) *TIME FOR PAYMENT.*—

14 “(1) *NEW REGISTRANTS.*—At the time of filing
15 an application for registration under this title, the
16 applicant shall pay to the Commission the fee speci-
17 fied in subsection (c). No part of such fee shall be re-
18 funded to the applicant. The filing of an application
19 for registration under this title shall not be deemed to
20 have occurred unless the application is accompanied
21 by the fee required under subsection (c).

22 “(2) *ONGOING REGISTRANTS.*—Each investment
23 adviser, the registration of which is effective on the
24 last day of its fiscal year, shall pay the Commission
25 the fee specified in subsection (c). Such payment shall

1 *be made not later than 90 days after the end of its*
 2 *fiscal year, or at such other time as the Commission,*
 3 *by rule, shall determine, unless its registration has*
 4 *been withdrawn, canceled, or revoked prior to that*
 5 *date. No part of such fee shall be refunded to the in-*
 6 *vestment adviser.*

7 *“(c) COST-BASED SCHEDULE OF FEES.—For any fis-*
 8 *cal year for which fees are authorized to be collected by an*
 9 *appropriations Act, the amount of any fees due from invest-*
 10 *ment advisers in accordance with subsection (b) shall be de-*
 11 *termined according to the following schedule:*

<i>“Assets under management</i>	<i>Fee due:</i>
<i>Less than \$10,000,000</i>	<i>\$300</i>
<i>\$10,000,000 or more, but less than \$25,000,000</i>	<i>\$500</i>
<i>\$25,000,000 or more, but less than \$50,000,000</i>	<i>\$1,000</i>
<i>\$50,000,000 or more, but less than \$100,000,000</i>	<i>\$2,500</i>
<i>\$100,000,000 or more, but less than \$250,000,000</i>	<i>\$4,000</i>
<i>\$250,000,000 or more, but less than \$500,000,000</i>	<i>\$5,000</i>
<i>\$500,000,000 or more</i>	<i>\$7,000.</i>

12 *“(d) SUSPENSION FOR FAILURE TO PAY.—The Com-*
 13 *mission, by order, may suspend the registration of any in-*
 14 *vestment adviser if it finds, after notice, that such invest-*
 15 *ment adviser has failed to pay when due any fee required*
 16 *by this section. The Commission shall reinstate such reg-*
 17 *istration upon payment of the fee (and any penalty due),*
 18 *if such suspension was based solely on the failure to pay*
 19 *the fee.*

20 *“(e) DEFINITION OF ASSETS UNDER MANAGEMENT.—*
 21 *As used in this section, the term ‘assets under management’*

1 *means the client assets with respect to which an investment*
 2 *adviser provides continuous and regular supervisory or*
 3 *management services.*

4 “(f) *RULEMAKING.*—*The Commission may adopt such*
 5 *rules as are necessary to carry out this section.*”

6 (b) *EFFECTIVE DATE.*—*The amendments made by this*
 7 *section shall become effective—*

8 (1) *in the case of section 203A(f) of the Invest-*
 9 *ment Advisers Act of 1940 (as added by this section),*
 10 *upon the date of enactment of this Act; and*

11 (2) *in the case of subsections (a) through (e) of*
 12 *section 203A of the Investment Advisers Act of 1940*
 13 *(as added by this section), upon the adoption by the*
 14 *Securities and Exchange Commission of implement-*
 15 *ing rules in accordance with section 203A(f) of such*
 16 *Act.*

17 **SEC. 3. SURVEYS.**

18 *The Investment Advisers Act of 1940 (15 U.S.C. 80b–*
 19 *1 et seq.) is amended by inserting after section 222 the fol-*
 20 *lowing new section:*

21 “*SURVEYS*

22 “*SEC. 223. (a) SURVEYS OF UNREGISTERED PER-*
 23 *SONS.*—

24 “(1) *IN GENERAL.*—*The Commission shall, not*
 25 *later than 3 years after the date of enactment of this*
 26 *section, and thereafter as appropriate, provide for the*

1 *conduct of a survey to determine the extent of, and*
2 *reasons for, the failure of persons to register as re-*
3 *quired by this title.*

4 “(2) *ACTIONS BASED ON SURVEY.*—*The Commis-*
5 *sion shall, on the basis of the results of the survey*
6 *conducted under paragraph (1), establish objectives*
7 *for the reduction or elimination of any failures iden-*
8 *tified therein and shall include in any annual reports*
9 *to the Congress under section 23(b) of the Securities*
10 *Exchange Act of 1934 submitted after completion of*
11 *the first survey—*

12 “(A) *a statement of such objectives;*

13 “(B) *an evaluation of the success in attain-*
14 *ing those objectives during the preceding year;*
15 *and*

16 “(C) *such recommendations as the Commis-*
17 *sion considers appropriate to assist in the at-*
18 *tainment of those objectives.*

19 “(3) *PATTERNS OF NONCOMPLIANCE.*—*If the sur-*
20 *vey conducted under paragraph (1) identifies any*
21 *pattern of noncompliance with the registration re-*
22 *quirements of this title and the rules issued under this*
23 *title, the Commission shall undertake such rulemaking*
24 *proceedings as may be necessary to correct such pat-*
25 *terns of noncompliance.*

1 “(b) *PROVISIONS NOT LIMITATION.*—The provisions of
 2 this section shall not be construed to limit the authority
 3 of the Commission to issue rules under this title, to conduct
 4 an examination or investigation at any time, or to institute
 5 proceedings under this title or any other provision of law.”.

6 **SEC. 4. DESIGNATION OF SELF-REGULATORY ORGANIZA-**
 7 **TIONS.**

8 *The Investment Advisers Act of 1940 (15 U.S.C. 80b–*
 9 *1 et seq.) is amended by inserting after section 223 (as*
 10 *added by section 3 of this Act) the following new section:*

11 “*DESIGNATION OF SELF-REGULATORY ORGANIZATIONS*

12 “*SEC. 224. (a) DESIGNATION To CONDUCT EXAMINA-*
 13 *TIONS.*—

14 “(1) *IN GENERAL.*—The Commission may by
 15 rule, consistent with the public interest, the protection
 16 of investors, and the purposes of this title, designate
 17 one or more self-regulatory organizations registered
 18 with the Commission under section 6 or 15A of the
 19 Securities Exchange Act of 1934, to conduct periodic
 20 examinations of its members, and affiliates of mem-
 21 bers, that are registered or required to register under
 22 this title, to determine compliance with applicable
 23 provisions of this title and the rules and regulations
 24 issued under this title. Any such rule shall specify the
 25 minimum scope and frequency for such examinations
 26 and shall, to the extent consistent with the protection

1 of investors, be designed to avoid unnecessary regu-
2 latory duplication or undue regulatory burdens.

3 “(2) *AUTHORITY OF ORGANIZATION.*—Any self-
4 regulatory organization designated under paragraph
5 (1) may discipline the members and affiliates of
6 members described in paragraph (1) for violations of
7 the applicable provisions of this title and the rules
8 and regulations issued under this title pursuant to
9 the standards and procedures set forth in sections 6,
10 15A, and 19 of the Securities Exchange Act of 1934.

11 “(3) *PENALTIES.*—Any money penalties imposed
12 by a self-regulatory organization for violations of this
13 title shall not exceed those contained in section 203(i).

14 “(b) *LIMITATIONS.*—

15 “(1) *PRIMARY BUSINESS LIMITATION.*—The Com-
16 mission shall not exercise the designation authority
17 contained in subsection (a) with respect to a member
18 or affiliate of a member if the primary business of the
19 member and its affiliates is investment advisory ac-
20 tivities.

21 “(2) *LIMITATION WITH RESPECT TO AFFILIATES*
22 *OF MEMBERS.*—The Commission shall not exercise the
23 authority contained in subsection (a) with respect to
24 an affiliate of a member of a self-regulatory organiza-
25 tion if—

1 “(A) the primary business of the affiliate is
2 investment advisory activities;

3 “(B) the affiliate is an affiliate of the mem-
4 ber solely as a result of the adviser’s (or an asso-
5 ciated person of the adviser’s) registration with
6 the member as a registered representative; and

7 “(C) the affiliate is a registered representa-
8 tive of the member solely to enable the adviser to
9 execute transactions that are incidental to the
10 investment adviser’s primary business;

11 unless the Commission determines, in accordance with
12 such other criteria as the Commission establishes by
13 rule, that such exercise of designation authority is
14 consistent with the public interest, the protection of
15 investors, the purposes of this title, and the objectives
16 of the Commission’s investment adviser examination
17 program.

18 “(3) LIMITATION WITH RESPECT TO SAVINGS AS-
19 SOCIATION AFFILIATES OF MEMBERS.—The Commis-
20 sion shall not exercise the authority contained in sub-
21 section (a) with respect to an affiliate of a member
22 of a self-regulatory organization if the affiliate is a
23 savings association, as such term is defined in section
24 3(b)(1) of the Federal Deposit Insurance Act (12
25 U.S.C. 1813(b)(1)).

1 “(4) *DEFINITIONAL RULES.*—For purposes of
 2 this subsection, the Commission may, by rule, estab-
 3 lish criteria for defining the terms ‘primary business’
 4 and ‘incidental to the investment adviser’s primary
 5 business’.

6 “(c) *AUTHORITY TO IMPOSE FEES.*—

7 “(1) *IN GENERAL.*—Any self-regulatory organi-
 8 zation designated by the Commission to perform the
 9 examinations specified in subsection (a) shall have
 10 the authority to collect fees in accordance with this
 11 subsection.

12 “(2) *LIMITATION.*—The total fee paid by a reg-
 13 istered investment adviser under this subsection shall
 14 not exceed an amount determined in accordance with
 15 rules prescribed by the Commission. Such rules shall
 16 require that the fees collected by a self-regulatory or-
 17 ganization under this subsection—

18 “(A) cover only the costs of the self-regu-
 19 latory organization’s expenses for examinations
 20 conducted pursuant to subsection (a);

21 “(B) as to any investment adviser, bear a
 22 reasonable relationship to the costs of conducting
 23 an examination of that adviser pursuant to sub-
 24 section (a); and

1 “(C) not exceed such portion of the fee au-
2 thorized under section 203A as the Commission
3 determines is allocable to the Commission’s ex-
4 penses for conducting such an examination.

5 “(3) *REDUCTION OF SECTION 203A FEES.*—The
6 amount of any fee that a registered investment ad-
7 viser is required to pay to the Commission under sec-
8 tion 203A with respect to any fiscal year shall be re-
9 duced by the amount paid to a self-regulatory organi-
10 zation in accordance with this subsection with respect
11 to such fiscal year.

12 “(d) *EFFECTIVE DATE OF RULE.*—A rule issued by
13 the Commission under this section shall become effective not
14 earlier than 90 days after the date on which the Commis-
15 sion submits to the House of Representatives and the Senate
16 a report—

17 “(1) containing the text of the proposed rule and
18 the reasons therefor;

19 “(2) describing the procedures to be used to co-
20 ordinate the collection of fees by the Commission
21 under section 203A and by a self-regulatory organiza-
22 tion under the rule; and

23 “(3) containing such other information as may
24 be necessary to describe the implementation and en-
25 forcement of the rule.

1 “(e) *DEFINITION.*—For purposes of this section, the
 2 term ‘affiliate’ means any person directly or indirectly con-
 3 trolling, controlled by, or under common control with a
 4 member of a self-regulatory organization.”.

5 **SEC. 5. ADDITIONAL DISCLOSURE OBLIGATIONS OF IN-**
 6 **VESTMENT ADVISERS.**

7 (a) *DISCLOSURE OBLIGATIONS.*—Section 204 of the
 8 Investment Advisers Act of 1940 (15 U.S.C. 80b–4) is
 9 amended—

10 (1) by striking the section heading and inserting
 11 the following:

12 “*PERIODIC REPORTS AND OTHER DISCLOSURE*
 13 *REQUIREMENTS*”;

14 (2) by inserting “(a) *PERIODIC AND OTHER RE-*
 15 *PORTS.*—” after “*SEC. 204.*”; and

16 (3) by adding at the end the following new sub-
 17 sections:

18 “(b) *REVIEW OF CONFLICTS OF INTEREST.*—

19 “(1) *EXAMINATION.*—The Commission shall, not
 20 later than 1 year after the date of enactment of this
 21 subsection, examine the nature of the conflicts of in-
 22 terest with an investment adviser’s fiduciary duties
 23 that may arise when an investment adviser is com-
 24 pensated on the basis of commissions or fees from the
 25 sale of investment products to clients or receives cred-
 26 its toward non-cash compensation.

1 “(2) *RULES.*—On the basis of the examination
 2 conducted under paragraph (1), the Commission shall
 3 prescribe any rules that may be necessary and appro-
 4 priate in the public interest or for the protection of
 5 investors and consistent with the purposes of this title
 6 to require that the existence and extent of any mate-
 7 rial conflicts of interest between investment advisers
 8 and their clients be fully disclosed. Such rules shall
 9 take into account the rules applicable to registered
 10 brokers and dealers and their associated persons
 11 under the Federal securities laws (including the rules
 12 of self-regulatory organizations registered thereunder).

13 “(c) *FACILITIES FOR FILING RECORDS AND REPORTS;*
 14 *ACCESS TO DISCIPLINARY AND OTHER INFORMATION.*—

15 “(1) *FILING DEPOSITORIES.*—The Commission,
 16 by rule, may require any investment adviser—

17 “(A) to file with the Commission any fee,
 18 application, report, or notice required by this
 19 title or by the rules issued under this title
 20 through any entity designated by the Commis-
 21 sion for that purpose; and

22 “(B) to pay all reasonable costs associated
 23 with—

24 “(i) such filing; and

1 “(ii) the maintenance of a process to
2 receive and respond to inquiries under
3 paragraph (2).

4 “(2) *RESPONSE TO INQUIRIES.*—

5 “(A) *IN GENERAL.*—An entity designated by
6 the Commission under paragraph (1) shall—

7 “(i) establish and maintain a readily
8 accessible telephonic or other electronic proc-
9 ess to receive inquiries regarding discipli-
10 nary actions and proceedings involving in-
11 vestment advisers and persons associated
12 with investment advisers; and

13 “(ii) respond promptly to such inquir-
14 ies.

15 “(B) *FEES.*—An entity designated by the
16 Commission under paragraph (1) may charge a
17 person, other than an individual investor, rea-
18 sonable fees for the cost of providing written re-
19 sponses to inquiries.

20 “(C) *LIABILITY.*—An entity designated by
21 the Commission under paragraph (1) shall not
22 be liable for any action taken or omitted in good
23 faith under this paragraph.”.

1 **SEC. 6. COMPLETION OF RULEMAKING INITIATIVES RE-**
 2 **QUIRED.**

3 *Section 204 of the Investment Advisers Act of 1940 (15*
 4 *U.S.C. 80b-4), as amended by section 5, is amended by*
 5 *adding at the end the following new subsections:*

6 “(d) *REGISTRATION FORM REVISIONS.*—

7 “(1) *STATEMENTS IN ANNUAL REPORTS.*—*The*
 8 *Commission shall include in each of the first 3 an-*
 9 *ual reports submitted pursuant to section 23(b) of*
 10 *the Securities Exchange Act of 1934 after the date of*
 11 *enactment of this subsection a statement describing*
 12 *the status of—*

13 “(A) *the Commission’s proposals for the re-*
 14 *vision of the form required for the registration of*
 15 *investment advisers under this title;*

16 “(B) *consultations with State securities*
 17 *commissions and other State authorities concern-*
 18 *ing the collection and dissemination of informa-*
 19 *tion contained on such form; and*

20 “(C) *the implementation of systems to col-*
 21 *lect and disseminate such information to enforce*
 22 *compliance with this title.*

23 “(2) *ANALYSIS REQUIRED.*—*The first statement*
 24 *required by paragraph (1) shall include an analysis*
 25 *of the methods by which the revisions of such registra-*
 26 *tion form will result in—*

1 “(A) the timely and effective disclosure to
2 investment adviser clients of material facts con-
3 cerning the background, compensation, services,
4 and practices of the adviser; and

5 “(B) the prominent disclosure to such cli-
6 ents of—

7 “(i) any conflicts of interest;

8 “(ii) methods available for securing ad-
9 ditional information concerning the adviser
10 and its employees;

11 “(iii) remedies available with respect
12 to disputes arising out of the advisory rela-
13 tionship; and

14 “(iv) any conviction of the investment
15 adviser or any person associated with the
16 investment adviser within 10 years preced-
17 ing the filing of any application for reg-
18 istration, or at any time thereafter, of any
19 crime that is punishable by imprisonment
20 for 1 or more years, or of a substantially
21 equivalent crime by a foreign court of com-
22 petent jurisdiction.”.

1 **SEC. 7. BOND REQUIREMENT.**

2 *Section 208 of the Investment Advisers Act of 1940 (15*
 3 *U.S.C. 80b–8) is amended by adding at the end the follow-*
 4 *ing new subsection:*

5 *“(e)(1) The Commission may require, by rules and reg-*
 6 *ulations for the protection of investors, any investment ad-*
 7 *viser registered under section 203 that—*

8 *“(A) is authorized to exercise investment discre-*
 9 *tion, as defined in section 3(a)(35) of the Securities*
 10 *Exchange Act of 1934, with respect to an account;*

11 *“(B) has access to the securities or funds of a cli-*
 12 *ent; or*

13 *“(C) is an investment adviser of an investment*
 14 *company, as defined in section 2(a)(20) of the Invest-*
 15 *ment Company Act of 1940,*

16 *to obtain a bond from a reputable fidelity insurance com-*
 17 *pany against larceny and embezzlement in such reasonable*
 18 *amounts and covering such officers, partners, directors, and*
 19 *employees of the investment adviser as the Commission may*
 20 *prescribe.*

21 *“(2) In implementing paragraph (1), the Commission*
 22 *shall consider—*

23 *“(A) the degree of risk to client assets that is in-*
 24 *volved;*

25 *“(B) the cost and availability of fidelity bonds;*

26 *“(C) existing fidelity bonding requirements;*

1 “(D) any alternative means to protect client as-
2 sets; and

3 “(E) the results, findings, and conclusions of the
4 study required by paragraph (3).

5 “(3) Before implementing paragraph (1), the Commis-
6 sion shall study (and shall make such study and its conclu-
7 sions and findings available to the public)—

8 “(A) the availability of fidelity bonds, both for
9 large-scale and small-scale investment advisers, and
10 also for investment advisers not located in urban
11 areas; and

12 “(B) the impact of the provisions of paragraph
13 (1) on the competitive position of small-scale invest-
14 ment advisers.

15 “(4) If the Commission adopts any rule or regulation
16 pursuant to paragraph (1), the Commission may, by rule,
17 exempt any person or class of persons from the requirements
18 of this subsection and the rules issued under this subsection,
19 under such terms or conditions and for such period as the
20 Commission shall prescribe. The Commission shall exempt
21 any investment adviser from the requirements of this sub-
22 section if—

23 “(A) fidelity bonds are not readily or reasonably
24 available in the urban or rural areas in which such
25 investment adviser is located; or

- 1 “(B) the cost of obtaining a fidelity bond would
- 2 have a substantial adverse impact on such investment
- 3 adviser’s competitive position.”.

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AMENDMENT